

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, May 25, 2005, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Gene Carroll, Roger Larson, Gerry Krieser, Melinda Pearson, Mary Bills-Strand, Lynn Sunderman and Tommy Taylor; Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Becky Horner, Tom Cajka, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order and requested a motion approving the minutes for the regular meeting held May 11, 2005. Motion for approval made by Carroll, seconded by Krieser and carried 8-0: Carlson, Carroll, Krieser, Larson, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

May 25, 2005

Members present: Carlson, Carroll, Krieser, Larson, Pearson, Bills-Strand, Sunderman and Taylor.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 2382B, an amendment to the STONY RIDGE PLANNED UNIT DEVELOPMENT; CHANGE OF ZONE NO. 05037; CHANGE OF ZONE NO. 05019; MISCELLANEOUS NO. 05006; SPECIAL PERMIT NO. 05024; COUNTY SPECIAL PERMIT NO. 05025; COMPREHENSIVE PLAN CONFORMANCE NO. 05004; ANNEXATION NO. 05011; CHANGE OF ZONE NO. 05034; and PRELIMINARY PLAT NO. 05008, EAGLETON HEIGHTS.**

Ex Parte Communications: None.

Item No. 1.1, Change of Zone No. 2382B; Item No. 1.6, Comprehensive Plan Conformance No. 05004; Item No. 1.7a, Annexation No. 05011; Item No. 1.7b, Change of Zone No. 05034; and Item No. 1.7c, Preliminary Plat No. 05008 were removed from the Consent Agenda and scheduled for separate public hearing.

Larson moved to approve the remaining Consent Agenda, seconded by Taylor and carried 8-0: Carlson, Carroll, Krieser, Larson, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'.

Note: This is final action on Comprehensive Plan Conformance No. 05004 and Eagleton Heights Preliminary Plat No. 05008, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

CHANGE OF ZONE NO. 2382B
AMENDMENT TO STONY RIDGE PLANNED UNIT DEVELOPMENT
ON PROPERTY GENERALLY LOCATED
AT NO. 70TH STREET AND ADAMS STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 25, 2005

Members present: Sunderman, Carroll, Larson, Taylor, Krieser, Carlson, Pearson and Bills-Strand.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing.

Proponents

1. **David Moreland**, 1639 Sunset Road, and **Doug McLeese**, 2600 Jane Lane, co-owners of Sportscasters Bar and Grill, explained that this is a proposal to construct a 750 sq. ft. beer garden to the north and northwest of the existing facility. The purpose is to have a licensed area that both smoking and nonsmoking customers can enjoy. This will not remove any parking stalls. Access to the beer garden would be only from the inside of the building and occupancy of the beer garden would be less than 50 people. There is an overhang on the northwest corner of the building. They intend to construct a 6' vinyl fence in front of the parking lot, making the beer garden an enclosed open air area.

Opposition

1. **Richard Albers** testified in opposition on behalf of the Stony Ridge Homeowners Association, which are the apartment buildings just to the north of this property. Most of the residents are elderly. All of the members of the Homeowners Association have signed a petition in opposition. Their concerns are whether there will be outside sound sources that will carry into the neighborhood. As it is now, the property owner whose bedroom abuts the edge of this property does not open her windows at all because of the noise that comes from the parking lot of this establishment. Others on the street which runs east/west perpendicular to 70th have also heard the noise.

Another concern is whether there will be seating in this outdoor area or will it only be a smoking area? Will the television be on during sports games? Would that noise carry over into the homeowners association? There have already been incidents where patrons have used the back yards of the homeowners for bathroom purposes.

There is also a concern about overflow parking. The neighbors have seen overflow parking from events at the bar which has gone to the south and filled up the Pinnacle Bank parking lot. The owners have stopped people from parking at the apartment complex across the street, but there are times when there is a need for more parking and the homeowners believe it could overflow around the corner into their street.

2. Ed Clapper, 7108 Stony Ridge Road, testified that the beer garden, which will be open air, is only 150 feet from the bedroom windows of the units on the south side of Stony Ridge Road. He has had occasion to listen to the boisterous disturbances that occur in the bar's parking lot from 11:30 p.m. and after. He believes the televisions on game days and nights will be bothersome to the homeowners association residents. He also pointed out that this establishment is located at a busy intersection.

Staff questions

Carroll noted that the north side of the building is 136 feet from the property line, and, according to the staff report, 150' is required for noise. Brian Will of Planning staff clarified that it is 150' if the door opens onto a residential district. In this case, the door opens onto 70th Street, so the 150' separation does not apply. Noise is a separate issue. The Lincoln Municipal Code does have noise limits and the Health Department is the enforcement agency. The bar would be held to the noise standards at the property line. The application did not show any sound or noise devices, etc., therefore it is assumed that they are not part of this application and are not approved as part of the application.

Response by the Applicant

Moreland stated that they do want to put televisions in the beer garden but they would agree not to have any sound. There will not be a speaker or stereo system outside. They are more than willing to work with the neighborhood. They will also put up a sign in the beer garden about respecting the neighbors.

This establishment has been at this location for twelve years. Pearson inquired as to how many meetings the applicants have had with the neighborhood association. Moreland stated that there have been none. Pearson suggested it might be a good idea to initiate some meetings with the neighborhood and help them resolve some of their issues. McLeese stated that they have had no neighborhood complaints in the twelve years. Pearson urged that the applicants need to initiate communication with the neighbors since this establishment is responsible for the noise. McLeese also pointed out that the applicants have heard from a lot of these neighbors as customers and they like the way they are doing business. Moreland

stated that they did meet with the neighbors a week ago and the lines of communication are now open. He has advised the neighbors to call the applicant if there is ever a problem. He would also be glad to attend their monthly neighborhood meetings.

Carlson confirmed that the applicants are aware that they are agreeing that the outside area cannot have any amplified sound or noise. Both Moreland and McLeese agreed. The televisions will have no sound. There will be seating for 50 people with tables and chairs. Bills-Strand has experienced outside establishments with several televisions without the sound and she believes it works fine.

ACTION BY PLANNING COMMISSION:

May 25, 2005

Larson moved approval, with conditions, seconded by Carroll.

Larson does not see this as a problem if they are not going to have any sound from the televisions. There is quite a bit of separation between the area and the neighbors.

Carlson recalled that last year, the Commission had considerable discussion about this design standard that changed into law as far as separation from the residential district. The rule is the rule and they meet the rule for the area to the north so he will support the motion and hope they follow through on their word.

Taylor is concerned about the impact in terms of when there is a score there is going to be a considerable amount of noise; however, with the distances involved, he cannot make a good enough case against it. So he will support the motion.

Pearson commented that she likes outdoor seating but, unfortunately, this takes 50 people who used to be confined inside walls and puts them outside where there is going to be a lot more noise impact. The noise impact now is negligible because everyone is inside. If this were more of a commercial center, she does not believe it would be a problem, but there will be 50 people outside within 130' and within 100' of multi-family residential, with people smoking, whooping and hollering. She does not believe this is appropriate being bounded by two residential properties.

Bills-Strand indicated that she will vote in support because when we banned smoking from our buildings, we created a need to accommodate people who smoke and it is better to have them in fenced areas than in parking lots.

Motion to approve the staff recommendation of conditional approval carried 5-3: Sunderman, Carroll, Larson, Carlson and Bills-Strand voting 'yes'; Taylor, Krieser and Pearson voting 'no'. This is a recommendation to the City Council.

COMPREHENSIVE PLAN CONFORMANCE NO. 05004
TO REVIEW A PROPOSED PERMANENT CONSERVATION
EASEMENT AS TO CONFORMANCE WITH THE
COMPREHENSIVE PLAN
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 25, 2005

Members present: Sunderman, Carroll, Larson, Taylor, Krieser, Carlson, Pearson and Bills-Strand.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing at the request of Mark Hickson.

1. Ben Higgins of the Public Works & Utilities Department, presented the proposal to find the proposed conservation easement in Pine Lake Heights to be in conformance with the Comprehensive Plan. The purpose is to permanently protect a constructed wetland and native buffer area. This conservation easement meets the intent and is in compliance with the Beal Slough Master Plan. Public Works has coordinated with the developer and the Pine Lake Heights Homeowners Association, which voted overwhelming in support.

Higgins then discussed the major components. There is a low flow liner on the south end that is failing and the developer is the current owner and has agreed to remove that low flow liner at their expense. In place of the low flow liner, some check weirs will be placed in that area and native grasses and wetland plants will be placed behind those weirs. This will help take care of the energy dissipation. There will be a sedimentation berm to help slow the water down and make it a more natural habitat to help water quality and water sediment. There will be native plant areas around the outside of the entire area, as well as native riparian habitat and wetlands to help with water quality and wetland protection. This meets the intent of Beal Slough Master Plan.

The developer and homeowners association will be doing the pond dredging and part of that will be used to do the sediment berm. It is a win-win-win because there is a three-way agreement that has been signed.

Larson inquired about the water getting under the bridge on Pine Lake Road. Higgins advised that there is a culvert to back up the water and slow the water down.

Support

1. Tim Texel, 7640 S. 38th, President of **Pine Lake Heights Homeowners Association**, testified in support. This is important to the Association. They have had several membership

meetings. There has been some concern expressed that the geese won't come to the lake, but there was interest in stopping that because it does create some problems. The meetings with Olsson and the City have addressed the concerns of the large majority of the board, officers and membership. They understand that the pond has been dredged once before and they are planning to dredge it again. The City will not be responsible for any of the dredging. The developer and homeowners will be paying for the dredging. 73.8% will be paid by the association. They are also trying to work with BryanLGH. The aesthetics of the pond is very important. The algae has become a problem and they are told the water quality will be better with the deeper pond and silt control. This gives a more natural look as opposed to the low flow liner that is about to collapse.

Opposition

1. Mark Hickson, 7140 Phoenix, testified in opposition. He noted that the association voted 37-8 and he does not believe there was equal representation from that community. He has major concerns. Williamsburg Village had a wetlands but the association took it out and put in a nice spillway with grass. They had a huge problem with mosquitoes and it interrupted their bike trail. He is concerned because the pond is developed nicely now and they have a bike trail through there. When he moved into his property, he was told by the developer that they would donate money to dredge that pond. All the area to the south is now developed and it will not silt back in. Thousands of people use that bike trail. He is concerned about the resale value of the houses. He is concerned about the construction that is going to go on in his back yard and what is going to happen to the trail. The developer is getting off the hook because BryanLGH hospital said they would pay for the dredging of the pond. His house is on the low flow liner. When it rains the water comes into his back yard because the flow liner was not built wide enough.

Response by the Applicant

Higgins explained that Williamsburg had a silt pond that was always meant to be filled. This is just a big pond that will work a lot better with a flow-through system. Williamsburg was like a hole dug in the ground.

Higgins was not aware that BryanLGH Hospital had offered to do the dredging. Some of the people in Williamsburg are now wanting a wetland. The city did dredge that out under agreement with Joe Hampton 10-12 years ago.

Higgins believes that this is a good project and most of the people and the developer are in favor.

Carroll wondered whether the developer is required to upkeep the pond and meet the standards once it is dredged. Higgins explained that there will be a three-year maintenance contract with whoever constructs it. It will not look as good as a manicured lawn for the first couple of years. Whoever constructs it will be required to come back and weed it out and take

care of it. Sooner or later, the developer will turn it over to the homeowners association which will agree to maintain it permanently.

Pearson inquired as to the impact of this on the city budget. Higgins stated that the high end is \$90,000.

ACTION BY PLANNING COMMISSION:

May 25, 2005

Larson moved a finding of conformance, seconded by Carroll and carried 7-1: Sunderman, Carroll, Larson, Taylor, Carlson, Pearson and Bills-Strand voting 'yes'; Krieser voting 'no'.

ANNEXATION NO. 05011,

CHANGE OF ZONE NO. 05034

FROM AG AGRICULTURAL TO R-3 RESIDENTIAL,

and

PRELIMINARY PLAT NO. 05008,

EAGLETON HEIGHTS,

ON PROPERTY GENERALLY LOCATED

AT N. 89TH STREET AND LEIGHTON AVENUE.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 25, 2005

Members present: Sunderman, Carroll, Larson, Taylor, Krieser, Carlson, Pearson and Bills-Strand.

Staff recommendation: Approval of the annexation, subject to an annexation agreement; approval of the change of zone; and conditional approval of the preliminary plat.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing.

Becky Horner of Planning staff submitted a request to revise the staff report conditions to delete Condition No. 2.3 and add a new Condition No. 4 to the preliminary plat to reflect the appropriate location and approval of the requested waiver.

Proponents

1. Mark Palmer of Olsson Associates appeared on behalf of the applicant and agreed with the conditions of approval, as revised today.

There was no testimony in opposition.

ANNEXATION NO. 05011

ACTION BY PLANNING COMMISSION:

May 25, 2005

Taylor moved approval, subject to an annexation agreement, seconded by Carroll and carried 8-0: Sunderman, Carroll, Larson, Taylor, Krieser, Carlson, Pearson and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 05034

ACTION BY PLANNING COMMISSION:

May 25, 2005

Taylor moved approval, seconded by Carlson and carried 8-0: Sunderman, Carroll, Larson, Taylor, Krieser, Carlson, Pearson and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

PRELIMINARY PLAT NO. 05008

ACTION BY PLANNING COMMISSION:

May 25, 2005

Taylor moved approval of the staff recommendation of conditional approval, as revised today, seconded by Krieser and carried 8-0: Sunderman, Carroll, Larson, Taylor, Krieser, Carlson, Pearson and Bills-Strand voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

COUNTY CHANGE OF ZONE NO. 05032

FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL

ON PROPERTY GENERALLY LOCATED AT

S.W. 56TH STREET AND W. DENTON ROAD.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 25, 2005

Members present: Sunderman, Carroll, Larson, Taylor, Krieser, Carlson, Pearson and Bills-Strand.

Staff recommendation: Approval.

Ex Parte Communications: None.

Proponents

1. **Valerie Harris**, 7101 S.W. Hunters Circle, the applicant, presented the proposal. She clarified that she does not plan to start a commercial kennel with this change of zone. This will allow her to get a special permit to keep her family pets. Prior to purchasing the property, she checked with the homeowners association regarding the number of dogs that she was allowed to have and she was told that there was no limit. She does not have 14 dogs and she does not want a commercial breeding or boarding facility. Her dogs are not of prime breeding

age. The Lancaster County zoning regulations require a special permit in AGR to have more than three dogs on less than 10 acres. She has not yet applied for the special permit, but it would allow a kennel, but the regulations do not stipulate whether the special permit is for commercial or personal use. Ms. Harris' only purpose is to be able to keep her dogs. She wants to comply with the law. But she also likes her home and she does not want to move. Her children hope to use the dogs in 4-H agility trials. She acknowledged that the sheriff has been called numerous times, but no citations have been issued.

Ms. Harris read letters in support into the record from Nancy Wehling and from Allen Snell.

Ms. Harris acknowledged that she has 11 dogs, 3 full-size horses, 3 ponies and a donkey. The dogs are now in kennels in chain link fencing. Harris is willing to do something else, if necessary.

Bills-Strand referred to the covenants, which state: "No animals, including, but not limited to livestock, poultry, dogs or cats shall be kept, bred, boarded or maintained for commercial purposes, and for any use other than personal use." Bills-Strand assumes it is a matter of defining 11 dogs as personal use. Harris again stated that she checked with the president of the Homeowners Association and she was told it was fine. She called the Planning Department and was told that her zoning was okay at that time. It's been a series of miscommunications.

Opposition

1. Rex Brinton, 7000 S.W. 49th Street, testified in opposition. He sleeps with his window open and he has been awakened a number of times because of the dogs.

2. Audrey Haake, 5400 W. Deercrest Drive, Denton, testified in opposition. She purchased her property in January of 1990, where they built their dream home, planted all the trees and did a lot of the construction themselves. In November of 2004, Ms. Harris moved in and put up pens all over the yard with at least 14 dogs. Haake believed that the neighborhood covenants would prevent this from happening. In reviewing the covenants, it was discovered that they were too vague, so they contacted their attorney and were told that they would have to prove Harris was raising the dogs for commercial purposes. Haake testified that she has seen at least four puppies this spring. One of the previous close neighbors believes they had been breeding and selling dogs for many years. The covenants provide that, "No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon, which may be or become an annoyance or nuisance to the neighborhood." Haake stated that these dogs bark day and night and are definitely a nuisance. The three kennels on the south side of the garage are within 20-25' of her property line.

Haake showed photographs of the kennels. Some of the dogs are chained up and some are not. Her bedroom is on the same side of the house as the kennels and her family cannot sleep with the windows open. She is also concerned about vaccinations and rabies. It is not

uncommon to see the Harris dogs on her property at least six times a week. The property is also never mowed.

3. Charles Stroman, 7000 S.W. Hunters Circle, directly to the east, testified in opposition. He purchased his property in 2000, built his home in 2001 and moved in in 2003. Since Ms. Harris moved in, he has heard nothing but barking dogs 24 hours a day. One of the reasons he left Lincoln was noise. This is maximum rudeness and inconsiderate. He has chased two of the dogs off his property at least twice.

4. Curt Kiner, 7501 S.W. Hunters Place, testified in opposition. He also hears the dogs barking.

5. James Hennessy, 7400 S.W. Hunters Place, testified in opposition. His property is over the hill and three windbreaks away, and with the south wind blowing in the summer, he still hears the dogs all the time. He is at least 800-1000 feet away, and the Harris dogs are over in his yard. They are running free all the time. Harris does not maintain any part of the property.

6. Ryan Thompson, 5301 W. Deercrest Drive, testified in opposition. The barking is an issue and they are barking at 3:30 a.m. The dogs get out and have brought dead carcasses into his yard. This will have an impact on the value of his property. The Harris property is overgrown with weeds. He does not believe the dogs are treated properly. The neighbors were not informed that Ms. Harris would be moving into the neighborhood with this many dogs. It is too good of a neighborhood to open it up to what this individual wants to do.

Response by the Applicant

Harris stated that she can appreciate the neighbors' concerns; however, she does not own the land on which the boat is shown in one of the photographs submitted by Ms. Haake. Her intent was to use the grassland as a rotating pasture for the ponies. She has now mowed the property. As soon as school is out she intends to put the door back on the building. She does not intend to spend any more money on the property if she cannot live there. She also pointed out that she has found her dogs "mysteriously" out of their locked pens when she has come home. There are photographs of footprints leading up to the gate. She leaves home at 6:30 a.m., and she has seen a number of other dogs running free. She has two dogs that are chained up because she has not put up their kennels yet. She assumed she was moving to an area where people wanted animals and liked animals. Her children are very active and involved in 4-H. The kennels on the south side of the garage are part of what is scheduled to be removed. She does not know whose dogs are barking because she brings hers in if they are barking.

ACTION BY PLANNING COMMISSION:

May 25, 2005

Larson moved denial, seconded by Pearson.

Larson lives on an acreage and he has a dog and works hard to make sure it is not offensive to the neighbors. He has lived in areas where dogs bark consistently and it ruins the quality of life.

Carlson reminded the Commission that this is a vote on a change of zone and not the special permit on the kennel, which will have to come back to the Commission. This is a change of zone from AG to AGR and the lots are clearly AGR lots. It is tough not to support the change of zone because the property is shown as AGR in the Comprehensive Plan. He agrees about the dogs being a problem, but he believes there will be opportunity to address that when the permit comes forward for a kennel.

Carroll agreed with Carlson, but he does not like to change the zoning on just one lot. It's either the whole subdivision decides to go to AGR or not – not just one lot. That is why he will vote to deny.

Bills-Strand commented that her mother raised dogs and had a kennel, but they lived on 63 acres because of that to provide a lot of buffer and a lot of land. There was also someone home almost all day to take care of the dogs.

Motion to deny carried 6-2: Carroll, Larson, Taylor, Krieser, Pearson and Bills-Strand voting 'yes'; Sunderman and Carlson voting 'no'. This is a recommendation to the Lancaster County Board.

*** Break ***

SPECIAL PERMIT NO. 05022
TO OPERATE A ROCK CRUSHER
ON PROPERTY GENERALLY LOCATED
EAST OF N. 27TH STREET AND OLD DAIRY ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 25, 2005

Members present: Sunderman, Carroll, Larson, Taylor, Krieser, Carlson, Pearson and Bills-Strand.

Staff recommendation: Conditional approval

Ex Parte Communications: None.

Tom Cajka of Planning staff submitted an e-mail sent from Marvin Krout, Director of Planning, to the City Council and Planning Commission members.

Proponents

1. Bob Lewis, appeared on behalf of Sanford & Son, LLC, the applicant. The property for this proposal is located at 3900 Industrial Avenue near N. 27th and Superior. It was the former location of Cega Services and Northwestern Metal, which operated it as a salvage yard starting back in the 1960's. The applicant agrees with the conditions of approval set forth in the staff report, including working with the Army Corps of Engineers to determine whether they need a 404 permit. They also agree to meet all requirements of the Health Department, including the requirements for dust control and to rescind the existing special permit or reduce the boundary. They have an existing special permit to operate the property as a salvage yard.

Carlson inquired as to the size of the rock crusher. Lewis stated that it is about the size of a semi-trailer. It is a portable machine into which they dump used concrete and asphalt, which crushes it into a usable size and then they sell it for use on other construction projects. The crusher has dust control within itself and they will also meet the dust control ordinance.

Carlson assumed that the material comes out in different sizes and the screens can be adjusted to the different material and it is stockpiled to move off-site at a later date.

Lewis explained that the first operation did not have dust control. They have met with the Health Department and the neighbor to the north and they now have control of the dust that leaves the premises.

As far as volume, Lewis advised that the site has been opened up to anyone that has concrete. A lot of the material is coming from downtown, Antelope Valley and the UNL Stadium project.

Pearson inquired about the hours of operation. Lewis explained that as of now, they had left it open. Signs have been posted as to the type of material and they had only notified certain contractors. The last couple of weeks they have shut down bringing any more material in because of the dust on the road and they have run out of room for storage. In the future, they plan to limit the hours of operation to 7:00 a.m. to 5:30-6:00 p.m. six days a week.

Larson inquired whether they stockpile and inventory. Lewis indicated that they have been inventorying. It has been a pretty lucrative business as far as the need for the material. It is a usable product so it does not stay on site very long. This site has a scale available.

Carlson inquired whether they crush the entire time between 7:00 a.m. and 5:00 p.m. Lewis explained that the crusher is a portable system so it might operate for 30 days and then be gone for 30 days. They can set the hours of operation but typically he has not seen them operate before 8:00 a.m. or after 5:00 p.m. and only three to four days a week. They do have control over the hours of operation.

Opposition

1. **Carol Brown**, 2201 Elba Circle, testified in opposition. This is along the bike path which she uses. There is a real problem with dust debris when they are crushing, which has been at 5:30 p.m. You can feel the grime all over your body, skin and socks. There is a health concern because she has asthma. She has to cover her mouth when she goes past this area and the wind blows it all over the place. There is a lot of dirt in this concrete. The fences are down. There is no safety. Kids could get in there. It is an eyesore. She showed pictures of the facility and suggested that it should be located where other industries are located like General Excavating and Yankee Hill Brick. It is time to look at zoning of this area to put commercial and retail into this area. She showed photographs taken from the bike path. It is nothing but a dump.

2. **Mike Rierden** testified in opposition on behalf of **General Dynamics, Stevenson Truck Repair** and **Dave Bratsher**, property owners in the area. General Dynamics and Stevenson Truck Repair have entered into a partnership that will have a significant impact upon the safety of our troops in Iraq. This project is addressing the safety of the vehicles used in Iraq. Armored shields are shipped to Kuwait and Bagdad and placed on the vehicles to add a significant amount of armor to the vehicles. The concern is dust when the crusher is operating and from the heavy truck traffic. If the dust gets into the paint operations then it can be rejected. More importantly is the concern over the impact that these dust particles may have on the welding operation. He suggested adding conditions of approval to the special permit: 1) a 2-lane asphalt road where the heavy truck traffic takes place; 2) relocation of the materials that are caving in the fence; 3) compliance with the Health department noise standards; and 4) a one-year time frame for renewal.

Pearson asked whether the Bratsher and General Dynamics properties are well fenced. Rierden did not know.

3. **Doug Tobiassen**, 6931 Lynn Street, plant manager for the **General Dynamics** facility located at 4300 Industrial Avenue, just north of the rock crusher site, testified in opposition. General Dynamics has been a defense contractor at this location since 1963, making a variety of composite structures for defense and aerospace applications. The M915 is the Army's version of a semi-tractor trailer, which operates out of Kuwait driving supplies. General Dynamics received a contract to provide armor for the cab on those trucks and this is an urgent requirement. General Dynamics did not have enough floor space available to do all the operations necessary so they subcontracted with Mr. Stevenson to do the welding and cleaning operations. The dust generated by the proposed rock crusher poses a risk to their traditional products. The structural welding that Mr. Stevenson is doing is highly susceptible to contamination from dust or other particulate matter. The concern is that a weld could be contaminated and thus degrade the integrity of the weld which may not be detected. Conceivably, General Dynamics could be in a position of unknowingly fielding a product that does not meet the structural requirements. If the application is to be granted, Tobiassen would hope that very stringent provisions be put in place to control the dust absolutely.

Staff questions

Gary Walsh, Health Department, advised that the Health Department has been to the location and there were notices of violation that have been sent to four of the parties involved. The Health Department did observe dust coming off of the property line when the most current crushing operation was there (a company from Kearney). The Health Department has talked to that company and has told them what they would have to do with respect to that equipment. They do have water on the crushing equipment and on the conveyors. The difficult situation is when you have an operation like this located about 30 feet from the front fence line. This is why the Health Department indicated that something would have to be done about moving the equipment away from the property line. There is visible dust passing off the premises onto the property located just to the north because the finish material that was being hauled out was going over an unpaved road with no kind of dust suppressant being used. There was some discussion about using water on the road, but in the summertime with the sun and high temperatures, they will have to put a lot of water on that road to keep it dust-free, especially with the size of the vehicles hauling the material out. There would need to be hard surface or some other dust suppressant. Even if you have a good coverage of water, the 30' distance does not allow proper suppression of the dust. If this were to be approved, it is going to be important to have that crushing equipment controlled by using water sprays on the conveyors and the crushers and it is going to have to be moved away from any property line. In addition, it would be best if they had something other than water applied to the roadway.

The Health Department has not checked the noise. The adjacent property is zoned industrial so they are allowed a greater amount of noise. The standard would be 75 decibels. A crushing operation that close to the property line is probably not going to be too difficult to break past 75 decibels when only 30 feet away.

Bills-Strand inquired whether a different type of fencing would provide some dust or noise control. Walsh believes it could have a little effect but the dust could go over the top of that fairly easily. He would not want to depend on that for dust control. Unless you have a real wall there, a fence is probably not going to reduce the noise.

Response by the Applicant

Lewis advised that this proposal complies with the Health Department requirements set forth in the staff report. They have agreed to move the operation 100' from the property line at staff's recommendation. As far as the noise, they will be required to have that determined during operation to see if they can meet that requirement. The applicant is not opposed to a dust suppressant on the road or potentially hard surfacing. The applicant is also not opposed to a one-year permit or some kind of review period. They will not operate if they cannot meet the criteria. The applicant will repair the fence.

With regard to the bike path, Lewis observed that the bike path came after this property was in place and zoned industrial since 1960. This applicant is operating under the current zoning. It was previously a salvage yard with junk cars piled up, used tires, gas tanks, etc. Lewis acknowledged that they were using the rock crusher but were required to shut down until they could get a special permit.

Larson inquired whether the dust comes from the truck travel or from the operation itself. Walsh observed that it comes from both.

Pearson wondered who would pay for the asphalt road if it is made a condition of approval. Bills-Strand suggested that the applicant would be required to pay for it.

Pearson wondered whether the conditions need to clarify where the rock crusher is to be relocated.

Tom Cajka of Planning staff interjected to clarify that it is not Industrial Avenue that the staff is concerned about. It is actually the driveway within the property.

ACTION BY PLANNING COMMISSION:

May 25, 2005

Carlson moved to deny, seconded by Pearson.

Carlson noted the testimony that this has a negative impact on the public trail and a negative impact on the surrounding industrial uses. The Planning Commission is to determine whether the proposed use is appropriate for this area and we have testimony that it probably is not.

Larson agrees and the operation is portable to a certain extent so denying the permit would not require tearing down the buildings, etc. to relocate. He just does not believe it fits into that area.

Bills-Strand indicated that she could go along with that, but we have to do something with all of the concrete that is there so she would probably agree to grant a temporary permit with stipulations of dust control and noise control to clear up what is there but not add anymore to the stockpiling.

Taylor stated that he will not support denial without at least making some means to see if we can make this a fit. If the applicant is willing to take all measures necessary to make this work, he sees no reason to deny it.

Pearson believes that the only thing that is offensive from this particular industrial tract is the rock crusher—the dust, traffic and crushed rock. She believes the applicant is obligated to fix the fence. The rock crusher is the only thing that is causing the problem here. They can continue with the way they were doing business without the rock crusher. Carroll stated that he did a lot of business at this facility when it was Northwestern Metal. It is

industrial. If the neighbors to the north are saying they will live with the conditions, he would prefer to give them one year to see if they can follow the conditions to make sure that they reduce the dust, noise, etc., and give them an opportunity to show it works, and if it does not work it goes away. There are not a lot of industrial areas open to take it somewhere else.

Motion to deny carried 5-3: Sunderman, Larson, Krieser, Carlson and Pearson voting 'yes'; Carroll, Taylor and Bills-Strand voting 'no'. This is final action, unless appealed to the City Council within 14 days..

COUNTY SPECIAL PERMIT NO. 04055,
FOUR STONES COMMUNITY UNIT PLAN,
and
COUNTY PRELIMINARY PLAT NO. 04025,
FOUR STONES,
ON PROPERTY GENERALLY LOCATED
AT S.W. 29TH STREET AND STAGECOACH ROAD.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: May 25, 2005

Members present: Sunderman, Carroll, Larson, Taylor, Krieser, Carlson, Pearson and Bills-Strand.

Staff recommendation: Conditional approval

Ex Parte Communications: None.

Proponents

1. Kent Seacrest appeared on behalf of the applicant, along with **Matt Langston** from ESP, the project engineer. This is an application for an AG community unit plan for 14 lots with the bonus. This proposal has had many continuations of public hearing. The original application was for 31 lots and there were neighborhood concerns and concerns from the County Engineer, Planning and NRD. The developer has since submitted a revised plan for 14 lots, which plan does a good job of protecting the NRD lake and floodplain easements and addresses the County Engineer's concerns. This property is outside the 3-mile jurisdiction, outside of Tier I, II and III and a small part is in the Village of Sprague's jurisdiction. The Village of Sprague has agreed to the little area that is in its jurisdiction. There is a good groundwater report. Rural Water is within the district so there is a backup system. This proposal is now in conformance with the Comprehensive Plan and the "major front door" to the development has been moved and is on S.W. 49th Street to address the neighbors' concerns, and the County Engineer is now in support. Seacrest agreed to all conditions of approval set forth in the staff report.

Carlson inquired as to the use of the balance of the land. Seacrest stated that until the County does some road improvements, the County Engineer will not favor developing the rest of the land. That is one of the reasons they chose to dump the east part of the property out of this application – because of the road issues. The potential for development is always there, but Seacrest believes it is one of those situations where this proposal complies with the standards of density and clustering.

Opposition

1. **Valerie Egger**, 1000 W. Stagecoach Road, Martell, testified that she is not opposed to the community unit plan except for the size of it. If it were just four to five houses, it would not bother her as much. She is concerned about the impact on traffic from the extra number of residents on Stagecoach Road. It is an extremely quiet road and there are three homes quite close to the road. So when you have traffic going by at 50-55 mph, noise, speeding and dust are definitely considerations that affect the quality of life and will affect the quiet atmosphere. Safety issues are also a concern. Stagecoach is a very hilly road with a dam along that road and cars have gone off that dam many times. There are slow farm vehicles that travel this road and visibility is not the best.

Response by the Applicant

Seacrest reiterated that the proposal has been reduced from 31 to 14 lots. He acknowledged that there are some existing acreage owners who went out there for peace and quiet, but that is what the reduction in the size of this development is trying to do as well. There is no intent to be unneighborly. With regard to safety, the developer worked with Don Thomas in the County Engineer's office and he has concluded that this development does not need to make any road improvements.

COUNTY SPECIAL PERMIT NO. 04055

ACTION BY PLANNING COMMISSION:

May 25, 2005

Carroll moved to approve the staff recommendation of conditional approval, seconded by Pearson.

Carlson stated that he will vote against the motion. He appreciates that they have reduced it to 14 lots, but there are still 280 acres left so they have the density capacity to put in the other 17 units. Sprague is one mile away with 61 dwelling units, so essentially, this development is creating a town half the size of Sprague just a mile away. He disagrees that there are acreage homes right around it – it is all farming. This is a major change. He does not believe it is good policy to create that kind of density in that close proximity to Sprague.

Motion for conditional approval carried 7-1: Sunderman, Carroll, Larson, Taylor, Krieser, Pearson and Bills-Strand voting 'yes'; Carlson voting 'no'. This is a recommendation to the Lancaster County Board.

COUNTY PRELIMINARY PLAT NO. 04025

ACTION BY PLANNING COMMISSION:

May 25, 2005

Carroll moved to approve the staff recommendation of conditional approval, seconded by Pearson and carried 7-1: Sunderman, Carroll, Larson, Taylor, Krieser, Pearson and Bills-Strand voting 'yes'; Carlson voting 'no'. This is a recommendation to the Lancaster County Board.

There being no further business, the meeting was adjourned at 3:20 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on June 8, 2005.

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